IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 587/2000

DHAKAR CHHATRAWAS SAMITI, BAYANA
Vs.
THE STATE OF RAJASTHAN & ORS.

DATE: 29.10.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Dr. P.C. Jain with
Mr. G.C. Saini for the petitioner.
Mr. B.S. Chhaba, Dy. GA for the State.

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This writ petition has been preferred by the petitioner Dhakar Chhatrawas Samiti, Bayana through its Chairman for construction of hostel in Bayana. The land measuring 2 Bighas and 10 Biswas was alloted in favour of the petitioner for construction of hostel. It is also alleged that the construction was started and an agreement was also executed on 29.11.68 and report of Patwari was also obtained on 23.04.70. An application was made to the erstwhile Tehsilar for making reference for the purpose of cancelling the allotment made in favour of the petitioner and the application was made at the instance of Tehsil Bayana on 21.05.85 before the Additional Collector, Bharatpur through SDO.

The Additional Collector, Bharatpur made a reference before the Board of Revenue, Ajmer vide order dated 20.01.94 and the Board of Revenue vide its order dated 26.10.94, cancelled the allotment made in favour of the petitioner observing that the land of public utility cannot be allotted under Section 16 of the Rajasthan Tenancy Act. Graveyard is undoubtedly a land of public utility and even if it is not in use, the public authorities cannot allot it for any other purpose. Therefore, the allotment made by the Collector and the subsequent mutation No. 1334 opened in favour of the petitioner is void ab initio and illegal and thus, the reference was accepted and the mutation No. 1334 was set-aside.

In review also, the Board of Revenue has not interfered with the order dated 26.10.04 passed by the Board of Revenue in reference.

The main challenge to the cancellation of allotment made in favour of the petitioner is on the ground that after obtaining report from the Patwari concerned and Tehsildar and an agreement was also executed, the respondents are bound by the principles of promissory estoppal and cannot cancel the allotment made in favour of the petitioner.

It is also contended by the learned counsel for the petitioner that the respondents cannot make reference to the extent of land which was allotted in favour of the petitioner, whereas the land of public utility also allotted to the Government to run their offices and the offices are already constructed over the public utility land and the reference with regard to the Government offices has not been made, therefore, the action of the respondents is discriminatory also.

In support of his submissions, the learned counsel for the petitioner has placed reliance on the judgment rendered by the Division Bench of this Court in the case of **Anandi Lal Vs. State of Rajasthan and Others, RLW 1996(1) Raj. 396,** wherein the Division Bench has considered that even when no limitation is prescribed, the power conferred upon the authority concerned could be exercised within reasonable time. In the facts of the case before it, the Supreme Court held that the powers under Section 211 of the Bombay Land Revenue Code in relation to the permission for user of the land for non-agricultural purposes, could be exercised within few months from the date of the permission. In that case, the power was exercised after a period of more than one year. The Supreme Court held that the exercise of power was too late.

Here in the instant case also, admittedly, the application for reference was made by the Tehsildar through SDO on 21.05.85, whereas the allotment was made in the year 1968 and thus, the reference was made after about 17 years of the allotment, therefore, the order of allowing reference itself is contrary to the ratio decided by the Division Bench of this Court in the aforementioned case of **Anandi Lal (supra)** and the Hon'ble Supreme Court in the case of **The Union of India Vs. The Mohindra Supply Co., AIR 1962 SC 256.**

It is also disputed that after getting alloted the land, the petitioner Samiti started construction of the hostel and the petitioner already spent more than Rs. 1 lac for construction.

This Court while issuing notices to the respondents, vide interim order dated 06.03.2000, directed the parties to maintain status quo and till date parties are maintaining status quo, which has not been opposed by the learned counsel appearing for the respondents.

I have heard rival submissions of the respective parties and carefully gone through the order impugned dated 20.01.94 passed by the Additional Collector, Bharatpur and the orders dated 26.10.94 and 03.05.95 passed by the Board of Revenue in reference

and in review petition respectively.

No doubt, in this writ petition the petitioner has raised several disputed question of facts and the respondent State has also not filed any reply controverting the averments made in the writ petition. As per the averment made in the writ petition, the petitioner has deposited certain amount and allotment was made in favour of the petitioner and an agreement was also executed and the possession was handed over.

It is also not disputed that the reference was made after about 17 years of allotment and the factum with regard to other Government offices whether these are existing on public utility land or on the Government land is also not clear.

In such circumstances, as the writ petition is involving several disputed question of facts, I deem it proper to quash and set-aside the order dated 26.10.94 passed by the Board of Revenue in Reference No. 52/94/LR/Bharatpur and the order dated 03.05.95 passed by the Board of Revenue in Review Petition No. 28/1994 and remand the matter back to the Board of Revenue for fresh adjudication after considering each and every aspect and the submissions made on behalf of the parties. The parties are at liberty to submit their just and legal objections and the submissions which are

taken here in this writ petition before the Board of Revenue.

With these observations, the writ petition stands disposed of.

The petitioner is at liberty to move stay application before the Board of Revenue and till the decision on the stay application, the parties are directed to maintain status quo as it exists today.

The stay application also stands disposed of in the terms indicated herein above.

(K.S. RATHORE),J.

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